

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

IA-1764/2021

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-1764/2021:**

**Mr. Kanwar Raj Bhagat**

Suspended Director of the Corporate Debtor

**..... 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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**Date of Order: 13.09.2023**

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 5<sup>th</sup> April 2021 as well as 23<sup>rd</sup> August 2021) was submitted by Successful Resolution Applicant namely M/s. Zaveri & Co. Pvt. Ltd. which was approved by the CoC in its 11<sup>th</sup> 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 Mr. Kanwar Raj Bhagat, Suspended Director of the Corporate Debtor on 05.04.2021 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;*
  - b. 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 ACIL;*
  - c. Ad-interim orders in terms of prayers above;*

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*d. To pass such Order and/or Orders as deem fit and proper;”*

4. 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.
5. The Resolution Professional has submitted in the Reply Affidavit dated 10.07.2021 that the Respondent No. 2 challenged the order of the NCLT, Guwahati Bench before the Hon'ble National Company Law Appellate Tribunal (“NCLAT”) in Appeal in Company Appeal (AT) (Insolvency) No. 291 & 590 of 2018, challenging the power of the Resolution Professional of ACIL in reducing/rectification of the claims filed by Respondent No. 2. The Appeal filed by Respondent No. 2 was disposed of vide judgment dated 01.02.2019 passed by the Hon'ble NCLAT. The Hon'ble NCLAT while disposing of the Appeal specifically noted that the Financial Creditor was open to take steps against the calculation made by the Resolution Professional under Section 60(6) against the M/s. Assam Company India Limited (“ACIL”) or any other party. It was further clarified that no opinion had been expressed with regard to the claim of Respondent No. 2 or the decision of the Resolution Professional of ACIL. Thus, it cannot be stated by the Applicant at present that the claim assessed by the Resolution

Professional of ACIL qua the calculation are conclusive and binding on the answering Respondent. Further, the Hon'ble NCLAT reiterated the law that a Resolution Professional has no power of adjudication. Further, the Hon'ble NCLAT specifically recorded in Para 24 of the Judgment (supra) that as per the Clause of the Resolution Plan for ACIL, it cannot be said that the Financial Creditor (Respondent No. 2) accepted the amount in full and final settlement of all its dues. However, only the right of recovery of debt of Financial Creditor available against the Corporate Guarantor has extinguished.

6. The Applicant preferred an appeal against the order dated 18.11.2020 of the NCLT, Delhi Bench before the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 1096 of 2020. The Hon'ble NCLAT vide judgment dated 11.05.2021 specifically held:

*"25. With the aforesaid discussion, we are not convinced with the argument made by the Ld. Counsel of the appellant that CIRP has already taken place against the Corporate Guarantor therefore, the second application against the Corporate Debtor is not maintainable. It cannot be held that the Financial Creditor accepted the amount in full and final settlement of all its dues. We are therefore of the considered view that the Application under Section 7 of the IBC is maintainable against the Corporate Debtor for the same debt and default and the Financial Creditor can recover the remaining dues from the Corporate Debtor."*

7. The Resolution Professional stated that the allegations made by the Applicant is clearly unfounded and devoid of any merit having regard inter-alia to the fact that the Resolution Professional has no power of adjudication and can only act within the four corners of the Code and to such effect, the Resolution Professional verified the claim submitted by the Respondent No. 2 based on financial documents and calculations provided to him. It will also appear from such financial documents and statements that the Respondent No. 2 has submitted that the claim made has already accounted for the 38.82 Crore

received in the Corporate Insolvency Resolution Process of ACIL. In this regard, it may be relevant to point out that the claim filed by the Respondent No. 2 in the Corporate Insolvency Resolution Process of ACIL was upto the date of admission of the petition against ACIL, i.e. 26.10.2017 whereas the claim filed in the Corporate Insolvency Resolution Process of the Corporate Debtor has been calculated till November 18, 2020.

8. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
9. 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.
10. 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 nittygritties 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 and delay the present CIRP proceedings of the Corporate Debtor.
11. In view of the above, the IA-1764/2021 filed by Mr. Kanwar Raj Bhagat, Suspended Director of the Corporate Debtor stands

**dismissed** with a 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)**