

**NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA**

C.P. (IB)/295(KB)2021
IA(I.B.C)/86(KB)2022, IA(I.B.C)/1027(KB)2021,
IA(I.B.C)/75(KB)2022, IA(I.B.C)/1100(KB)2021

**CORAM: 1. HON'BLE MEMBER(J), SHRI RAJASEKHAR V.K.
2. HON'BLE MEMBER(T), SHRI BALRAJ JOSHI**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING ON 01ST FEBRUARY, 2022, 10:30 A.M

IN THE MATTER OF	RESERVE BANK OF INDIA VS SREI INFRASTRUCTURE FINANCE LIMITED
UNDER SECTION	IBC UNDER SEC 7

Appearance (via video conferencing):

IA(I.B.C)/75(KB)2022

Mr SN Mookherjee, Advocate General } For the Applicant

Mr Ratnanko Banerji, Senior Advocate;

Mr Rishav Banerjee, Advocate;

Mr Dipen Chatterjee, Advocate;

Mr Pratik Mukhopadhyay, Advocate

Mr Saptarshi Mandal, Advocate.

Mr Jishnu Saha, Senior Advocate } for R1&2/Administrator of

Mr. Soumyajit Mishra, Advocate SIFL & SEFL

Mr. Abhinav Vasisht, Sr Advocate } for R3 (UCO Bank) & R4 (Axis Bank)

Mr. Anoop Rawat, Advocate

Mr. Saurav Panda, Advocate

Ms. Suhani Dwivedi, Advocate

Mr. Vishrut Kansal, Advocate

Mr. Deepanjan Dutta Roy, Advocate

Ms. Maanvi Jain, Advocate

Mr. Ramji Srinivasan, Sr. Advocate } for R5/KPMG

Mr. Deep Roy, Advocate

Mr. Rahul Auddy, Advocate

Mr. Rajshree Chaudhary, Advocate

Ms. Shrishti Agnihotri, Advocate

IA 1100/2021

Mr. Ravi Kadam, Senior Advocate } For the Applicant/Administrator
Mr. Jishnu Saha, Senior Advocate
Mr. Rohan Kadam, Advocate
Mr. Soumyajit Mishra, Advocate

IA 1027/2021

Mr. Abhirup Dasgupta, Advocate } for the Applicant
Mr. Ishaan Duggal, Advocate
Mr. Syed Ehtesham Huda, Advocate
Md. Rizwan Alam, Advocate

Ms. Neelina Chatterjee, Advocate } for the Respondent/Administrator, SIFL.
Mr. Soumyajit Mishra, Advocate

IA No.86/2022

Mr Ranjan Bachawat, Senior Advocate } for the Applicant
Mr Vishal Sinha, Advocate

Ms. Neelina Chatterjee, Advocate } for the Respondent/Administrator, SIFL.
Mr. Soumyajit Mishra, Advocate

ORDER

IA(IBC)75/KB/2022:

1. Mr SN Mookherjee, Learned Advocate General represented the applicant in today's hearing .Learned senior counsel for the Respondent No.1&2/ Administrator present. Learned senior counsel for R3 (UCO Bank) and R4/Axis Bank present. Learned senior counsel for Respondent No. 5/KPMG present.
2. This matter was taken up for hearing on 25.01.2022 when it was moved by the learned Advocate General citing extreme urgency in the matter. It was mentioned that the parallel audit was being conducted one under the aegis of the RBI directions and the other under the IBC. Learned Advocate General, submitted that this is causing grave prejudice to the applicant and it was necessary to grant relief to the applicant by staying the audit which was being conducted by KPMG, the completion of which had already overshoot the time mandate and it was not known when the audit was going to be completed.
3. After hearing the Learned Advocate General for the Applicant, this Bench had directed that if the report of the forensic audit being conducted by Respondent No. 5 is ready then the

same should be kept in a sealed cover without dissemination for the time being. The matter was thereafter posted on 01.02.2022.

4. Today, when the matter was taken up, Mr Ramji Srinivasan, learned senior counsel appearing for Respondent No.5/KPMG submitted that the forensic audit report in question was completed on way back on 22.12.2021 with the participation of the suspended management and that the report was also circulated to the lead banks on 28.12.2021. He sought time to file a reply affidavit to place on record these facts.
5. Mr Abhinav Vasisht, learned senior counsel appearing on behalf of Respondent Nos. 3 & 4/Banks submitted that a reply affidavit on behalf of R3 & R4 has already been filed. Supplementing the submissions of Mr Ramji Srinivasan, Ld Sr Counsel for R5, he submitted that the report had been further circulated to all the lenders including the ECB lenders *vide* email dated 29.12.2021, weeks prior to the order dated 25.01.2022 passed by this Adjudicating Authority. Mr Vasisht submitted that there arises a serious question of jurisdiction of this Adjudicating Authority to stay the hands of the banks from taking action on the basis of the forensic audit commissioned by the banks in terms of the RBI circulars. He further submitted that no *prima facie* case could have been argued on the day the application was moved, since the banks were not aware of the subject matter and therefore no instructions could be conveyed to the learned counsel appearing on behalf of the CoC on that day. There is also a question of locus of the Applicant to maintain the present application, he submitted.
6. Mr. SN Mookherjee, learned Advocate General appearing on behalf of the applicant submitted that on the face of it the report submitted by KPMG is incomplete and even according to the KPMG should not be as a definitive pronouncement. Therefore no action should be taken on the basis of this report even on facts. On the question of the locus of the applicant, the learned Advocate General submitted that the applicant was the director till the 04.10.2021 when the board of the corporate debtor was superseded by the RBI by appointing an administrator. He expressed concern on the forensic audit conducted by the transactional auditor and by KPMG and that too without consulting the persons in management. Learned AG further submitted that the applicant was also a shareholder of

the first corporate debtor whose subsidiary is the second corporate debtor. So, he submitted that there was enough locus for maintaining the present application on the part of the applicant. He further stressed that the interim orders be extended to cover any coercive action against the applicant hearing on the basis of the forensic audit report submitted by the R5/ KPMG.

7. We have considered the rival submissions. Serious objection has been taken for the continuation of the orders dated 25.01.2022 passed by this Adjudicating Authority on two grounds – (1) that this Bench was not apprised of the fact that as on 25.01.2022 the report in question has already been circulated to all the lenders of the two corporate debtors in question; and (2) that this Adjudicating Authority functioning under the IBC has no jurisdiction to prevent any action being taken by the lenders on the basis of the report submitted by R5/KPMG.
8. The basis of passing the order on 25.01.2022 was that the report was not ready and was indeed a ‘work in progress’ Looking at the submissions today, which reveal that the report had not only been completed but also stands disseminated to the concerned, as per the detailed reply submitted on behalf of the banks, we are of the view that the interim orders cannot be continued in their present form. However, the question of jurisdiction will also have to be heard by this Adjudicating Authority. These are issues that will need to be resolved one way or the other quickly so that the process of law can proceed unhindered.
9. Keeping in view the totality of circumstances, we hereby direct that reply affidavits on behalf of R5 and on behalf of R1 & R2/Administrator be filed within a period of one week without waiting for a copy of this order to be uploaded. Copies thereof be circulated to the counsel on record for the applicant. Rejoinders are permitted provided the same is filed at least two days before the next date of hearing, so that the respondents are not taken by surprise.
10. List this matter after completion of pleadings on **15.02.2022** as a specially ordered matter.

IA(IBC)/86/KB/2022:

11. Mr Ranjan Bachawat, learned Senior Counsel for the applicant present. Ms Neelina Chatterjee, learned counsel for the respondent/Administrator present.
12. This is a matter where the Applicant claims to have been unfairly excluded from the list of creditors while it has a claim on the basis of an arbitral award for a sum of ₹50,43,58,533/- It is also claimed that there has been no response from the Administrator as to why the claim is not collated so far.
13. The claim has been pending with the Administrator since October 2021.
14. This is a case where the very constitution of the CoC is likely to undergo a change if the claim of the applicant is allowed. Therefore, it is necessary to hear this matter expeditiously so that the CIRP can proceed without a hitch. Given this scenario, the administrator is hereby directed to file a reply affidavit in the matter within a period of four days. Copies of the reply affidavit be served on the counsel on record for the applicant. List this matter on 07.02.2022.

IA(IBC)1100/KB/2021:

15. Mr Ravi Kadam a/w Mr Jishnu Saha, learned senior counsel for the Administrator present. By consent, list this matter on 07.02.2022.

IA(IBC)1027/KB/2021:

16. Mr Abhijit Dasgupta, learned counsel for the Applicant present. Mr Jishnu Saha, learned senior counsel for the Administrator present.
17. Heard learned counsel appearing for the applicant in part. For continuation of arguments list on 07.02.2022.

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)