

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH (Court -II)
KOLKATA**

**IA(IBC)/1091(KB)2023
in
CP(IB)/204(KB)2021**

*Under section 60(5) of the Insolvency & Bankruptcy Code, 2016
read with rule 11 of the National Company Law Tribunal Rules, 2016*

In the matter of:

Suasth Health Care Foundation (CIN: U85100WB2008NPL130971) having its registered office at Plot No.X-1, 2 & 3, Block – EP, Sector V, Salt Lake City, Kolkata - 700 091

.... Corporate Applicant

And

In the matter of:

SREI Equipment Finance Limited, Through the Administrator, Mr. Rajneesh Sharma

....Applicant

Versus

1. Mr. Ravi Sethia, Resolution Professional of Suasth Health Care Foundation;
2. The Committee of Creditors of Suasth Health Care Foundation;
3. Consortium of Nishkhala Healthcare Private Limited and Urja Pharma Chem

... Respondents

Order reserved on: 04/08/2023

Order pronounced on: 12/09/2023

Coram:

Smt. Bidisha Banerjee : **Member (Judicial)**

Shri Balraj Joshi : **Member (Technical)**

Appearances (through hybrid mode):

For RP	:	Mr. Ramji Srinivasan, Sr. Adv. Mr. Deep Roy, Adv. Mr. Rahul Auddy, Adv. Mr. Aditya Gooptu, Adv. Ms. Dhaval Savla, Adv.
For CoC	:	Mr. Abhinav Vasisht, Sr. Adv. Mr. Saptarshi Saha, Adv. Mr. Aridam Mrinal Pal, Adv.
For applicant in IA/1091/2023	:	Mr. Jishnu Saha, Sr. Adv. Mr. Rishad Medora, Adv. Ms. Ramya Hariharan, Adv. Ms. Asmita Rakhecha, Adv.
For Resolution Applicant	:	Mr. Gaurav Mitra, Adv. Mr. Anurag Bhatt, Adv. Mr. Lokesh Pathak, Adv. Ms. Lavanya Pathak, Adv.
For R3 to R5, R7, R10 & R-11 In IA/1025/2022	:	Mr. Soumalya Ganguli, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

1. This Adjudicating Authority convened through hybrid mode.
2. **IA(IBC)/1091(KB)2023** is an application filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short “**IBC**”) read with rule 11 of the National Company Law Tribunal Rules, 2016 by Mr. Rajneesh Sharma, Administrator of **SREI Equipment Finance Limited**, against the respondents praying for the following reliefs:

(a) An order setting aside the resolution plan submitted for approval by the Respondent No. 3 herein and thereafter approved by the Respondent No.2; and/or

(b) In the alternative to prayer (a) above, an order directing the SRA being the Respondent No. 3 herein, to treat the Applicant herein at par with the other financial creditors under the resolution plan; and/or

(c) The SRA being the Respondent No.3 herein, be directed to modify and resolution plan approved by the CoC being the Respondent no. 2 so as to ensure that the Applicant is treated at par with the other financial creditors proportionate to the admitted claim of each financial creditor, under the said plan; and/or

(d) Costs; and

(e) Such other orders and/or directions as may be deemed fit by this Hon'ble Tribunal in the facts and circumstances of the present case.

This application is supported by an affidavit¹ duly affirmed by Mr. Sohan Kumar Jha, Constituted Attorney of the Applicant.

3. Vide order dated 28/08/2023 in IA(IBC)1381(KB)2022, this Adjudicating Authority has passed the following orders:

“34.to ensure fairness qua all the stakeholders, we deem it appropriate to send the resolution plan back to the CoC to review the distribution so as to balance the interest of all stakeholders as required in section 30(2) – Explanation 1, and see that a provision can be made for payment to the applicant from the proceeds.”

“35. The CoC will be at liberty to consider any other proposal including that of resolution applicant in IA 187/KB/2023 on the basis of viability, feasibility and merits. IA(IB) No. 1381/KB/2023 shall be put back on board for considering along with the revised distribution, if any.”

¹ At pages 34 to 44 of the application

“36. Since IA(IB) No. 1567/KB/2022 has been preferred seeking intervention in IA(IB)No. 1381/KB/2022, in terms of the order passed in IA(IB)No.1563/KB/2022 and IA(IB) No. 1381/KB/2022, we feel that no separate order is required to be passed in this application”.

“37. This order will accordingly govern all the three I.As.”

4. In the light of the aforesaid order dated 28/08/2023, the present application has become infructuous since the Resolution Plan was sent back to the CoC to review the distribution so as to balance the interest of all stakeholders as required in section 30(2) – Explanation 1 of IBC, as discussed in details in our aforesaid order dated 28/08/2023.
5. **IA(IBC)/1091(KB)2023 is accordingly dismissed.**
6. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
7. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 12th day of September, 2023.

hb.