

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

IA-4161/2022

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-4161/2022:**

**Mr. Somshankar Das Gupta**

Suspended Director of the Corporate Debtor

**..... Applicant**

**VERSUS**

**Mr. Rakesh Kumar Agarwal**

Resolution Professional of the Corporate Debtor

**..... Respondent**

**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.

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

**IA-4161/2022 In IB-571(ND)/2020**

**Date of Order: 13.09.2023**

## **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 the 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. Somshankar Das Gupta, Suspended Director of the Corporate Debtor on 10.08.2022 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. Direct the Respondent to furnish the copy of the information memorandum and the Resolution Plan approved by the Committee of Creditors to the Applicant;*
  - b. Ad-interim orders in terms of prayers above;*
  - c. Such further or other order or orders be passed and/or direction or directions as this Hon'ble Tribunal may deem fit and proper;"*
4. It is the case of the Applicant that the Information Memorandum was prepared by the Resolution Professional and the Resolution Plan was approved by the members of Committee of Creditor (CoC). The Applicant vide emails dated 16<sup>th</sup> July, 2022 and 27<sup>th</sup> July, 2022 and

**IA-4161/2022 In IB-571(ND)/2020**

**Date of Order: 13.09.2023**

vide letter dated 28<sup>th</sup> July, 2022 have requested the Respondent to provide the copy of the Information Memorandum and the copy of the Resolution Plan but instead of furnishing the copies as requested by the Applicant, the Respondent vide its email dated 2<sup>nd</sup> August, 2022 replied, which reads as under:

*“With regards to the information memorandum, please note that the said document is for the perusal of prospective Resolution Applicants only and cannot be shared with the Suspended Board of Directors. Furthermore, please note that you have been called upon in each and every meeting of the Committee of Creditors (CoC), You have deliberately chosen not to attend the meeting of CoC, wherein the respective resolution plans were shared, discussed and deliberated upon. The resolution plan that now stands accepted by the CoC is pending approval before the Hon’ble NCLT, New Delhi Bench. Hence, the undersign regrets that at this juncture the undersigned is not in a position to share the copy of the approved Resolution Plan with you.”*

5. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
6. In order to enable the Resolution Applicants to prepare a Resolution Plan for the Corporate Debtor, the Code mandates a duty upon the Resolution Professional to prepare a document containing all relevant details of the Corporate Debtor in order to assist such Resolution Applicants. This document which contains all the relevant information of the Corporate Debtor is called an Information Memorandum (IM) which is defined under Section 5(10) of the Code as under: –

*“Section 5(10)- Information Memorandum means a memorandum prepared by the Resolution Professional under sub-section (1) of section 2”.*

7. Once the Information Memorandum is prepared, the Resolution Professional must make sure that it is readily available to whoever is interested to bid a solution for the Corporate Debtor.

8. Additionally, sub-regulation (4) of Regulation 36 of CIRP Regulations provides that the RP shall share the IM with the members of the CoC as well as the Resolution Applicant only after receiving an undertaking from such member or the Resolution Applicant to the effect that the information provided in the IM shall not be used by such person to cause undue gain or undue loss to itself or any other person and comply with the Section 29(2) of the Code.
9. We find that the IBC, 2016 is a procedural Code and the process stipulated therein needs to be followed in the letter and spirit. There is no such provision in the IBC, 2016 and in the Regulations made thereunder that allows the Resolution Professional to issue/provide the Information Memorandum and the Resolution Plan approved by the CoC to the Suspended Director of the Corporate Debtor.
10. Hence, we are of the view that the Resolution Professional has not committed any illegality by not sharing the Information Memorandum and the Resolution Plan with the Suspended Director of the Corporate Debtor.
11. In view of the above, the IA-4161/2022 filed by Mr. Somshankar Das Gupta, Suspended Director of the Corporate Debtor stands **dismissed**.

**-SD-**

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

**-SD-**

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