

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION  
WRIT PETITION (L) NO.22872 OF 2021

Adisri Commercial Private Limited and another ... Petitioners  
Vs.  
Reserve Bank of India and others ... Respondents

Mr. Janak Dwarkadas, Senior Advocate with Mr. Ameet Naik, Mr. Chirag Kamdar, Mr. Abhishek Kale and Mr. Deepak Deshmukh i/b. Naik Naik and Company for Petitioners.

Mr. Ravi Kadam, Senior Advocate a/w. Mr. Venkatesh Dhond, Senior Advocate with Mr. Rohan Kadam, Mr. Prasad Shenoy, Ms. Aditi Phatak, Mr. Nilang Desai, Mr. Vivek Sheth, Mr. Nishant Upadhyay, Ms. Meraja Balkrishnan, Mr. Dhaval Vora i/b. Udawadia & Co. for Respondent No.1.

**CORAM : UJJAL BHUYAN &  
MADHAV J. JAMDAR, JJ.**

**DATE : OCTOBER 07, 2021**

**P.C. :-**

Heard Mr. Dwarkadas, learned senior counsel for the petitioners and Mr. Ravi Kadam along with Mr. Dhond, learned senior counsel for respondent No.1 - Reserve Bank of India.

2. By filing this petition under Article 226 of the Constitution of India, petitioners seeks quashing of the impugned order dated 01.10.2021 and the related press release dated 04.10.2021 issued by respondent No.1.

3. By the impugned order dated 01.10.2021 passed under section 45IE of the Reserve Bank of India Act, 1934, respondent No.1 has superseded the Board of Directors of respondent No.2 and has appointed Shri. Rajneesh Sharma as its administrator with immediate effect. The reasons for supersession of the Board of Directors have been mentioned in the annexure to the impugned order dated 01.10.2021. By the press

release dated 04.10.2021, respondent No.1 stated about the supersession of the Board of Directors of respondent No.2 and also about appointment of the administrator further mentioning that respondent No.1 intends to shortly initiate the process of resolution of respondent Nos.2 and 3 under the Insolvency and Bankruptcy Code, 2016 and would apply to the National Company Law Tribunal (Tribunal or NCLT) for appointing the administrator as the insolvency resolution professional.

4. Petitioner No.1 is a shareholder of respondent No.2 and petitioner No.2 is a former director of respondent Nos.2 and 3 and is therefore vitally interested in the affairs and sustenance of the said respondents.

5. It is stated that respondent No.2 and respondent No.3 are systematically important non-deposit taking Non-Banking Financial Company (NBFC). It may be mentioned that respondent No.2 holds the entire shareholding of respondent No.3.

6. Mr. Dwarkadas, learned senior counsel for the petitioners has referred to the impugned order dated 01.10.2021 and submits that the same has been issued abruptly and in extreme haste, thus arbitrarily. He submits that the statutory inspection of respondent No.2 was carried out by respondent No.1 as far back on 31.03.2020. Therefore, there is no proximate cause for taking such a drastic step as supersession of Board of Directors and appointment of administrator. Referring to the press release dated 04.10.2021, he submits that on 18<sup>th</sup> and 19<sup>th</sup> June, 2021, respondent No.2 had informed respondent No.1 that it had received non-binding term sheets from Makara Capital, Singapore and Arena Investment for investment proposal worth Rs.2200 crores and Rs.2000 crores respectively. Respondent No.2 had approached respondent No.1 for in principle approval of such investment. The sudden impugned decision and the related threat of approaching NCLT for initiating corporate insolvency resolution process would jeopardize not only such

investment proposals but the very future of the two NBFCs. Referring to the Covid-19 situation and the restrictions imposed on NBFCs by Reserve Bank of India, he submits that on the one hand NBFCs were required to pay principal and interest to the lending bank which is the UCO Bank in this case but restrained from recovering the same from the operators. In the circumstances, he submits that the impugned action is totally unfair and unjust and requires interference.

7. On the other hand Mr. Ravi Kadam, learned senior counsel submits that this is not a case where even filing of an affidavit by Reserve Bank of India is called for. From the documents filed by the petitioners themselves he submits that it is a clear case of complete financial mismanagement by respondent Nos.2 and 3. In fact there are serious allegations against both the two companies of misdirection of companies' funds. He submits that both the two companies have not complied with regulations and supervisory instructions of Reserve Bank of India for a long time. The two companies had defaulted in their debt obligations of all the creditors and are having very precarious financial condition. In so far abruptness of the impugned action as alleged by learned senior counsel for the petitioners, he submits that there was a stay by NCLT and only after the stay was vacated by the appellate tribunal, impugned action has been taken.

7.1. Ultimately he submits that it is a question of a poor corporate governance for which the Reserve Bank of India had to step-in in the discharge of its statutory obligations. Interference in such matters by the High Court under Article 226 of the Constitution of India has been discouraged by the Supreme Court in *Peerless General Finance and Investment Company Limited Vs. Reserve Bank of India*, (1992) 2 SCC 343. He, therefore, seeks dismissal of the writ petition.

8. Submissions made by learned counsel for the parties have received the due consideration of the Court.

9. At the outset, we may extract the impugned order dated 01.10.2021 along with the annexure appended thereto for ready reference. Order dated 01.10.2021 along with the annexure reads as under:-

“Executive Director

**CO.DOR.ISG.No.51467/20.07.007/2021-2022**

**October 01, 2021**

**Supersession of the Board of Directors of  
M/s Srei Infrastructure Finance Limited, Kolkata, West Bengal  
under Section 45-IE of the Reserve Bank of India Act, 1934  
Order**

Srei Infrastructure Finance Limited, Kolkata (SIFL) is a Non-Banking Finance Company (CoR No.B.05.02773 dated March 31, 2011), governed by the provisions of the Reserve Bank of India Act, 1934.

2. The statutory inspection of the SIFL conducted by Reserve Bank of India under Section of 45-N of Reserve Bank of India Act, 1934 with reference to its financial position as on March 31, 2020 revealed serious deterioration in its financial position.

3. SIFL has defaulted in its payment obligations in respect of bank borrowings and market borrowings, which reveals serious concerns about the conduct of the affairs of the company.

4. Taking into account the defaults committed by SIFL in meeting various repayment obligations and concerns emanating from the inspection/special audit conducted by the Reserve Bank, in exercise of the powers conferred by Section 45-IE of the Reserve Bank of India Act, 1934, the Reserve Bank of India, hereby supersedes the Board of Directors of SIFL and appoints Shri Rajneesh Sharma as its Administrator with immediate effect. The major supervisory concerns constituting the basis of the supersession of the Board of Directors are given in Annex.

(Jayant Kumar Dash)  
Executive Director

**Annex**

The major reasons for supersession of Board of Directors are as follows:-

i. As per data submitted by financial institutions, the total borrowings of SIFL stood at Rs.11,746 crore, on June 30,

2021. SIFL has defaulted with 12 lenders aggregating Rs.3,566 crore.

ii. The Board of Directors of SIFL and Srei Equipment Finance Limited (SEFL) had on July 04, 2019 approved transfer of assets and liabilities (including liabilities towards issued and outstanding NCDs) of SIFL by way of slump exchange to SEFL with effect from October 01, 2019. Despite non-receipt of No-objection certificate (NOC) from majority of the lending institutions, SIFL and SEFL had given effect to the slump exchange.

iii. Several supervisory concerns (e.g. violation of IRACP norms, evergreening of NPA accounts, connected lending, weak corporate governance standards, inadequate systems and control, poor compliance standards etc.) observed during past inspections by the Reserve Bank have been communicated through supervisory letters, DO letters and also reiterated in the meetings held by the Reserve Bank with the management of the company.

iv. Inspection of SIFL with reference to financial position as on March 31, 2020 revealed that the company is not meeting minimum regulatory CRAR (15%) and NOF (Rs.300 crore). Further, infrastructure loans as a percentage of total assets was assessed at 3.33% as against the regulatory requirement of 75%.

v. Special Audit conducted by the Reserve Bank in December 2020-January 2021 observed that funds disbursed to certain borrowers were received back from such borrowers/ their group companies on the same date/dates close to the date of disbursement, which indicated evergreening.

vi. SIFL has remained non-compliant with RBI regulations and supervisory instructions. Despite continuous engagement and follow up by the Reserve Bank, SIFL has failed to take corrective action on governance, systems and controls, compliance, etc.”

9.1. From a perusal of the order dated 01.10.2021, we find that statutory inspection of respondent No.2 was conducted by Reserve Bank of India under section 45N of the Reserve Bank of India Act, 1934 ('RBI Act' hereinafter) with reference to its financial position as on March 31, 2020. Such inspection revealed serious deterioration in its financial position. Respondent No.2 has defaulted in its payment obligations in respect of bank borrowings and market borrowings, which is a matter of serious concern. Because of such defaults, Reserve Bank of India in

exercise of powers conferred under section 45IE of the RBI Act has superseded the Board of Directors of respondent No.2 and has appointed Shri. Rajneesh Sharma as its administrator with immediate effect.

9.2. The major reasons for supersession of the Board of Directors are mentioned in the annexure appended to the impugned order dated 01.10.2021. While the total borrowings of respondent No.2 stood at Rs.11,476 crores as on 30.06.2021, it has defaulted with 12 lenders aggregating Rs.3,566 crores. Board of Directors of both respondent Nos.2 and 3 had on 04.07.2019 approved transfer of assets and liabilities of respondent No.2 by way of slump exchange to respondent No.3 with effect from 01.10.2019. However, despite non-receipt of no objection certificate from majority of the lending institutions, respondent Nos.2 and 3 had given effect to the slump exchange. Respondent No.2 did not maintain minimum regulatory CRAR and NOF. Infrastructure loans as a percentage of total assets was assessed at 3.33% as against the regulatory requirement of 75%. Special audit conducted by Reserve Bank of India during December, 2020 and January, 2021 revealed that funds disbursed to certain borrowers were received back from such borrowers either on the same date or on dates close to the date of disbursement which indicated evergreening. Despite continuous engagement and follow up by Reserve Bank of India, respondent No.2 has failed to take corrective steps and remained non-compliant with Reserve Bank of India regulations and supervisory instructions.

10. Under section 45N of the RBI Act, RBI has the power to cause an inspection at any time of any banking institution including a financial institution for the purposes of verifying the correctness or completeness of any statement, information or particulars furnished to the Reserve Bank of India or for the purpose of obtaining any information or particulars which the non-banking institution has failed to furnish on being called upon to do so or if the Reserve Bank of India considers it necessary or expedient to inspect that institution.

10.1. As per section 45IE of the RBI Act, Reserve Bank of India is empowered to supersede the Board of Directors if it is satisfied that in the public interest or to prevent the affairs of a non-banking financial company being conducted in a manner detrimental to the interest of the depositors or creditors or for securing the proper management of such company or for financial stability, it is necessary so to do. Upon such supersession, it may appoint a suitable person as the administrator.

11. Coming to the press release dated 04.10.2021, not only Reserve Bank of India has informed about supersession of the Board of Directors and appointment of administrator but it has also informed that it intends to shortly initiate the process of corporate insolvency resolution of respondent Nos.2 and 3 under the Insolvency and Bankruptcy Code, 2016 and more particularly under the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 and would apply to the NCLT for appointing the administrator as the insolvency resolution professional.

12. Upon thorough consideration of the entire matter, we are of the view that present is not a fit case where we should invoke our extraordinary jurisdiction under Article 226 of the Constitution of India. We are unable to agree to the contention made on behalf of the petitioner that there is no proximate cause for issuance of the impugned order. As a matter of fact there need not be any proximate cause for an action like the impugned one. Because the financial position of respondent No.2 was considered as on 31.03.2020 and because respondent No.2 had transferred assets and liabilities of respondent No.3 by way of slump exchange despite non-receipt of no objection in October, 2019 would not in any manner impeach the decision-making process. On the contrary, it may indicate that despite opportunity granted to rectify governance issues and improve financial condition, nothing was done. It cannot be

said that Reserve Bank of India has acted without jurisdiction or in violation of the principles of natural justice. These are matters of financial, economic and corporate decision making to handle which statutory bodies like Reserve Bank of India are fully empowered and competent. It would be hazardous and risky for the courts to enter into such domain which are dealt with by expert bodies. Court should be very circumspect in interfering in such matters as was held by the Supreme Court in **Peerless General Finance and Investment Company Limited** (*supra*).

13. Thus having regard to the above, we are not inclined to entertain the writ petition. Writ petition is accordingly dismissed. However, there shall be no order as to cost.

**(MADHAV J. JAMDAR, J.)**

**(UJJAL BHUYAN, J.)**

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