



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – II, CHENNAI**

IA(IBC)/857(CHE)/2022

In

IBA/786/2019

*(Filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016
r/w Rule 11 of NCLT Rules, 2016)*

In the matter of **SHREE GANESH EPC PRIVATE LIMITED**

INFINITAS ENERGY SOLUTIONS PRIVATE LIMITED,
Represented by its Liquidator
Mr.R.Venkatakrishnan,
Rajparis Trimeni Towers,
No.147, First Floor,
GN Chetty Road, T-Nagar,
Chennai - 600 017.

... Applicant

Vs.

SHREE GANESH EPC PRIVATE LIMITED,
Represented by its Liquidator,
Mr. S.Rajendran,
7-1E2, Main Road,
Muppandal Devi Temple,
Aralvaimozhi

... Respondent

Order Pronounced on **13th September 2023**

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Present: -

For Applicant :Mr.V.V.Sivakumar, Advocate

For Respondent :Ms.Elamathi, Advocate



ORDER

(Hearing conducted through Physical Mode)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

The Captioned application under Section 60(5) of Insolvency Bankruptcy Code, 2016 ('The Code') r/w Rule 11 of NCLT Rules, 2016 by Mr.R.Venkatakrishnan the Liquidator of **INFINITAS ENERGY SOLUTIONS PRIVATE LIMITED** is for seeking to direct the Respondent viz. **SHREE GANESH EPC PRIVATE LIMITED** to admit the claim of the Applicant to the tune of Rs.15,04,53,231/- and to modify the report of the stakeholders of the Respondent in this behalf.

2. It is stated that the Applicant was admitted to CIRP on 18.09.2017. Liquidation of Applicant was ordered on 06.02.2019 and Mr. R.Venkatakrishnan was appointed as the Liquidator.

3. It is stated that as per last audited balance sheet for the FY 2015-16, the Applicant had invested Rs.12,03,65,000/- in the equity shares of the Respondent as below,

S.No	Date of Transfer	No. of Shares	Price per share	Amount invested
1.	16.07.2012	42,98,750	28	Rs. 12,03,65,000/-



4. The Applicant has also extended loan to the tune of Rs.3,00,88,231/- to the Respondent till 2015. Therefore, a sum of Rs.15,04,53,231/- was receivable from the Respondent.

5. It is stated that the Liquidator acting on behalf of the Applicant filed two claims dated 10.02.2022 in Form-D and Form-C in e-mail dated 11.02.2022 to the Liquidator of the Respondent.

6. In response, vide letter dated 18.03.2022 the Liquidator of the Respondent rejected the claim of the Applicant on the ground that the Applicant has not submitted any document, agreement or bank statement to support its claim. Further, stated that as per the statement of accounts submitted to the Respondent, the dues pertain to the year 2012 and time barred.

7. Alleging the above reply, the Applicant stated that the Share Application money falls under the definition of deposit as per Explanation (a) to the Section 2(c)(vii) of the Companies (Acceptance of Deposits) Rules, 2014 (hereinafter referred as 'Deposit Rules'). Further, stated that in terms of Section 74 of the Companies Act, 2013 ('the Act'), any deposit accepted by a Company before commencement of the Act or any interest due thereon remains unpaid on such commencement or becomes due at any time thereafter, the company shall repay within one year

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from 01.04.2014 or from the date on which such payments were due, whichever is earlier.

8. It is stated that the Applicant paid the share application money to the Respondent on 16.07.2012. The shares should have been allotted to the Applicant on or before 15.09.2012. If not, the Respondent ought to refund the amount to the applicant on or before 30.09.2012.

9. Further stated that as per Rule 17 of the Companies (Acceptance of Deposits) Rules, 2014 the Respondent has to pay penal interest at the rate of 18% per annum for the overdue period.

10. With respect to the limitation period for the loan advanced it is stated that the last audited financials of the Applicant is up to 31.03.2016. Since CIRP of the Respondent was initiated on 18.09.2017, it is only 18 months from the Insolvency Commencement date and well within the limitation.

11. In the Reply filed by the Respondent, it is stated that the Applicant failed to provide the additional documents sought by the Liquidator in order to prove the existence of debt as per Regulation 18 of IBBI (Liquidation Process) Regulation, 2016.

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12. Further, stated that the name of the Applicant is neither in the list of shareholder nor in the list of share application pending allotment of the Respondent Company as per MCA records. Regarding the claim of Rs.3,00,88,231/- there are no documents to evidence the loan and advance such as communication or confirmation with the Respondent. There are no underlying agreements for such transactions.

13. In the Rejoinder the Applicant stated that as per Regulation 2(b)(iii), the Audited Financial Statements were provided to support the claim submitted in Form-D. The Applicant had filed bank statements reflecting transaction with the Respondent at page 24 of the application.

14. It is stated that without appreciating the documents submitted by the Applicant, the Liquidator of the Respondent rejected the claim. Further, contended that instead of allotting the share the Respondent Company utilized that money for its debt repayment.

15. Heard the submissions of Ld. Counsels of both the parties and perused the documents on record. In so far as the claim of 12,03,35,000/- is concerned it is seen from the Bank Statement of Accounts placed by the Applicant at page 23 (Extracted hereunder) on 16.07.2012, the applicant has transferred Rs.16,50,00,000/- to the Respondent.

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Statement of Account No: 0305002100152854

Printed By: 340758SK

DATE: May 21, 2021 1:50:48 PM

Customer Name: INFINITAS ENERGY SOLUTIONS PRIVATE LIMITED TRISHE
Customer Address: KNOWLEDGE HOUSE,6,KASTURI RANG
ALWARPET, CHENNAI
TAMIL NADU 600018

Branch Address: III FLOOR,RAYALA TOWER
781-785, ANNA SALAI TAMIL NADU
CHENNAI 600001

IFSC Code: PUNB0030500 **MICR Code:** 600024012

Statement for Period : 01-04-2012 to 31-03-2013

Date	Withdrawal	Deposit	Balance	Alpha	CHQ. NO.	Narration
12-07-2012		569999916.00	569999916.00 Cr.			
12-07-2012	29982213.00		540017703.00 Cr.			RTGS From : 04RTGS CUSTODY TR
12-07-2012	55000000.00		485017703.00 Cr.			UR 290- TOWARDS CLOSURE
12-07-2012		29982213.00	514999916.00 Cr.			TR 03015-93-95426
12-07-2012	25000000.00		489999916.00 Cr.			9395426- ENTRY OF DATE REVERSED
12-07-2012	61.00		489999955.00 Cr.			RTGS To : PUNBH12194033601NINE RIVERS CAPITAL HOLDINGS
12-07-2012	12585842.00		477404213.00 Cr.			RTGS Charges
13-07-2012	350.00		477403863.00 Cr.			Y/S-DDS ON CHENNAI
13-07-2012	5000000.00		472403863.00 Cr.			Un-Recovered Amt of Shortfall Le IC/Folio/ etc
13-07-2012	55.00		472403808.00 Cr.			RTGS To : PUNBH1219504079TOPEC PROJECTS
13-07-2012	4000000.00		432403808.00 Cr.			RTGS Charges
13-07-2012	58.00		432403752.00 Cr.			RTGS To : PUNBH12195048430MARK GREEN DEVELOPERS PVT LTD
13-07-2012	2500000.00		407403752.00 Cr.			RTGS Charges
13-07-2012	56.00		407403696.00 Cr.			RTGS To : PUNBH12195048221FRONE OFFICE CONSULTANTS PVT LTD
13-07-2012	2000000.00		387403696.00 Cr.			RTGS Charges
14-07-2012	6000000.00		327403696.00 Cr.			TR 93-95426
14-07-2012	55.00		327403641.00 Cr.			RTGS To : PUNBH12196069134MARK GREEN DEVELOPERS PVT LTD
16-07-2012	6500000.00		262403641.00 Cr.			RTGS Charges
16-07-2012	66.00		262403585.00 Cr.			TR 0305-93-95426
16-07-2012	1260000.00		249903585.00 Cr.			RTGS Charges
16-07-2012	16500000.00		84903585.00 Cr.			RTGS To : PUNBH12198092963BHARAVI ENGINEERING PRIVATE LIMIT
18-07-2012	56.00		84903529.00 Cr.			RTGS To : PUNBH12198093094SRI GANESH WIND POWER ENGINEERING
16-07-2012	2000000.00		84903529.00 Cr.			RTGS Charges
16-07-2012	1250000.00		52403529.00 Cr.			TR 21-152854
16-07-2012	56.00		52403473.00 Cr.			RTGS To : PUNBH1218097492CHAUHAN WIND ENERGY PVT LTD
17-07-2012		1250000.00	64903473.00 Cr.			RTGS Charges
17-07-2012	1250000.00		52403473.00 Cr.			RTGS RETD CREDITED
17-07-2012	56.00		52403417.00 Cr.			RTGS To : PUNBH12199018100CHAUHAN WIND ENERGY PVT LTD
17-07-2012		1250000.00	64903417.00 Cr.			RTGS Charges
17-07-2012						RTGS-RETURN-PUNBH12199018100-CHAUHAN WI-Beneficiary

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Disclaimer: This is an Electronically Generated Statement In System. No Signatures are Required.

16. Note 11 of Audited Financial Statement as on 31.03.2016 of the Applicant shows that 42,98,750 shares of Rs.10/- each were

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allotted at premium of Rs.18/- per share and the same is reproduced below

Note: 11
Non Current Investments - (Valued at Cost)

Particulars	As at 31st Mar 2016	As at 31st March 2015
Unquoted		
Equity Shares - Shri Ganesh Windpower Engineers P.L		
9,99,960 Shares of Rs.10/- each purchased @ Rs.30/-	150,363,600	150,363,600
47,98,750 Shares of Rs.10/- each allotted at premium of Rs.18/- Per share		
Equity Shares - Trishe Green Solutions P Ltd		
5100 shares @ Rs.10/- each	51,000	51,000
Equity Shares - Trishe Renewable Energy Pvt Ltd		
40000 shares @ Rs.10/- each	400,000	400,000
Quoted		
Canara Rubeco		
Total	150,814,600	150,814,600

17. Regulation 18 of the Insolvency Bankruptcy Board of India (Liquidation Process) Regulation, 2016 provides as follows:

"18. Claims by financial creditors.

(1) A person claiming to be a financial creditor of the corporate debtor shall submit proof of claim to the liquidator in electronic means in Form D of Schedule II.

(2) The existence of debt due to the financial creditor may be proved on the basis of-

(a) the records available in an information utility, if any; or

(b) other relevant documents which adequately establish the debt, including any or all of the following-

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been repaid; and

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any."

From the above provision, it is clear that to prove the existence of the financial debt, record from the financial statement is adequate.



In the present case the claimant had provided Audited Financial Statement supporting its claim and the bank statement manifesting the transaction with the Respondent viz., Shree Ganesh EPC Private Limited.

18. Be that as it may, in the rejection letter dated 18.03.2023 sent by the Liquidator of the Respondent it is noted that the liquidator has clearly admitted that the Respondent has received Rs.16,53,65,000/- in which Rs.12,03,65,000/- is the Share Application Money. The relevant part of the said letter is extracted below:

Further Analysis in relation to your claim:

Even though both the claims were rejected; we had gone through the books of accounts of SGEPL since Apr'12 to examine the transactions & the authenticity of the claim. It takes the substantial amount of time and efforts to go back such long period of time at our end. If the proper documents were submitted by the claimant along with the claim, then the same would have been addressed much earlier by us. The below mentioned remarks and comments were taken from the information and explanation received from the Erstwhile management of SGEPL in relation to your claim against SGEPL.

SGEPL has been approaching various investors to make further establishment and technological up gradation of services. In that context, they had reached M/s.Trishe & entered into shareholding agreement & invested as below:

Particulars	Amount (In Rs.)
Share Application Money	12,03,65,000
Loan	4,50,00,000
Total	16,53,65,000

The above-mentioned remittances were received by SGEPL on 16th Jul. 2012. Post receipt of the same, the distribution happened to the related parties of the claimant as per their instructions in the below said dates:

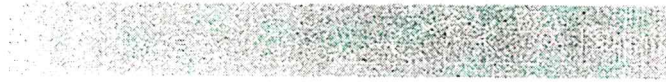
On the contrary, the Respondent in para 4 of its reply has stated as follows: -

"4. With regard to claim of Rs.12,03,63,800/- against Share Application Money, Applicant has not submitted documents such as bank account statement to evidence transfer of

money to the account of the Corporate Debtor. Liquidator/Respondent has been not provided with any correspondent between the Applicant and the Corporate Debtor."

In view of the above discussions, this Tribunal finds it necessary to consider the claim of Rs.12,03,63,800/- of the Applicant as per the supporting documents filed by the Applicant. The Liquidator/Respondent is accordingly directed to consider the claim of the Applicant.

19. In so far as the claim of Rs.3,00,88,231/- as claimed by the Applicant, we see that in the e-mail exchanged between M/s. Suzlon Energy Limited and the Applicant herein, it is recorded as under,



October 6, 2014

To

M/s. SUZLON Energy Ltd.,
One Earth,
Opp. Magarpatta City,
Hadapsar,
PUNE,
Maharashtra.

Dear Sir,

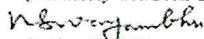
Sub : Request to Release the Payment Directly to M/s. Sri Ganesh Wind Power Engineers P Ltd.,

We would like to inform you that during the month of October 2012, we had requested you to do swap the outstanding of Rs.3,25,76,807/- paid to you on our behalf by M/s. Sri Ganesh Wind Power Engineers P Ltd. , out of the total outstanding amount of Rs.6,25,76,807/-, paid as advance for supply of Wind Turbines ordered by us

Now we hereby request you to kindly release the payment of Rs. 3,25,76,807/- directly to M/s. Sri Ganesh Wind Power Engineers P Ltd., and we hereby confirm that "We have No Objection" and "we would not be entitled to claim this amount Rs. 3,25,76,807/- from you, once the payment is made to M/s. Sri Ganesh Wind Power Engineers P Ltd.,"

Kindly do the needful at the earliest.

With Thanks,
For Infinitas Energy Solutions P Ltd,
(Formerly TRISHE Developers P Ltd.)


Authorised Signatory
N Swayambhu
Chief- Contracts and Materials





Moreover, the applicant has not placed any proof as per Regulation 18 of Liquidation Regulation to support the above claim. In such circumstances, we did not find any unreasonableness in the decision of the liquidator which requires interfere this Tribunal.

20. In view of the above discussions, this application IA(IBC)/857/2022 is partially **allowed** and **disposed off**.



SAMEER KAKAR
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

Gopishankar. D

*Order pronounced under Rule 151 of NCLT Rules 2016, by **Hon'ble Judicial Member Sanjiv Jain** on behalf of the Bench comprising of **Sanjiv Jain, Member (Judicial) and Sameer Kakar, Member (Technical)**.*

Court Officer