

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT-II)

Item No. 1
(IB)-913(ND)2020
IA-1615/2021

IN THE MATTER OF:

M/s. SREI Infrastructure Finance Limited ... Applicant/Petitioner

Vs

M/s. Alstrong Enterprises India Limited ... Respondent

Under Section: 7 of IBC, 2016

Order delivered on 02.07.2021

CORAM:

**SHRI. ABNI RANJAN KUMAR SINHA,
HON'BLE MEMBER (J)**

**SHRI. L. N. GUPTA,
HON'BLE MEMBER (T)**

PRESENT:

Mr. Arijit Mazumdar and Ms. Akanksha Kaushik, Advocates for SREI

ORDER

Order pronounced in the Open Court today.

-sd-

**(L. N. GUPTA)
MEMBER (T)**

-sd-

**(ABNI RANJAN KUMAR SINHA)
MEMBER (J)**

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-II

(IB) 913 (ND)/2020
IA/1615(ND)2021

IN THE MATTER OF:

SREI Infrastructure India Pvt Ltd. ...Financial Creditor

VERSUS

Alstrong Enterprises India Pvt. Ltd. ...Corporate Debtor

AND IN THE MATTER OF:

Punjab National Bank
Through Its representative
Sh. Durgesh Kumar, Chief Manager ...Applicant/Intervenor

VERSUS

SREI Infrastructure Finance Ltd.
Having Its Registered Officer at Vishwakarma
86C, Topsia Road (s), Kolkata-700046 ...Respondent

SECTION: 60(5) of IBC, 2016 r/w Rule 11 of the NCLT Rules, 2016

Order Delivered on: 02.07.2021

CORAM:

SH. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

Mr. Arijit Mazumdar, Ms.Akansha Kaushik and Mr. Shambo Nandy,
Advocates for Petitioner, Mr. Dhananjay Kumar Singh, Advocate alongwith
Ms. Shweta Jha, Law Officer, PNB for Intervener (PNB & SBI), Advs. Karan
Gandhi & Sudiksha Saini for Respondent



ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

The present application is filed by the applicant/PNB under Section 60(5) of Insolvency & Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016 praying for the following reliefs:

- i. Allow the present application;*
- ii. Allow the applicant to intervene in Company Petition No. IB-913/ND/2020;*
- iii. Dismiss the Company Petition No. IB-913/ND/2020;*
- iv. Impose exemplary cost on SREI Infrastructure Finance Limited;*
- v. Pass any such other or further order as may be deemed fit and proper.*

2. We have heard the Ld. Counsel for the applicant and perused the averments made in the application.

3. Ld. Counsel for the applicant in the course of his arguments referred to the averments made in the application and submitted that the Intervener/Punjab National Bank has filed the present application in the capacity of being leader of the Consortium of Banks (comprising the intervener and the State Bank of India) to protect the interests of the banks.

4. He further submitted that in terms of the guidelines of the Reserve Bank of India, the intervener and the State Bank of India had formed a Consortium of Banks and enhanced & reduced the credit limits from time to time in the following manner:



9. The said limits have been enhanced and reduced from time to time and at present the limits being enjoyed by the borrower are as follows :-

S.No	Name of bank		Total exposure
1	Punjab National Bank	Fund based- Rs 33.00 crores	Rs 65.50 crores
		Non Fund based- Rs 32.50 crores	
2	State Bank of India	Fund based-Rs 17.00 crores	Rs 34.50 crores
		Non Fund based- Rs 17.50 crores	

5. He further submitted that the Corporate Debtor i.e. M/s Alstrong Enterprises India Pvt Ltd in the Company Petition no. IB-913/2020 have also mortgaged three properties to secure the credit facilities granted by the Consortium. The details of the properties are as under: -

- i. Land & factory building situated at Lane No. 2, Phase-II, SIDCO Industrial Complex, Bari Brahmana, Jammu- 8 Kanals- in the name of M/s Alstrong Enterprises India Pvt Ltd.
- ii. Land & Factory building situated at IGC, Phase-II, Samba, Jammu-50 kanls - in the name of M/s Alstrong Enterprises India Pvt Ltd.
- iii. Industrial property located at Khasra 131, Gram- Raipur, Pargana- Bhagwanpur, Roorkee.

6. Therefore, it was submitted that the applicant/intervener is a necessary party in the proceeding of the Company Petition no. IB-913/ND/2020.

7. He further submitted that the notice may therefore be issued upon the applicant of the Company Petition No. IB-913/ND/2020.

8. Since by filing this application, the applicant has prayed to implead them as a party in this proceeding, therefore, at this juncture, we consider provision of Section 7 of IBC, 2016, which is quoted below: -

7. Initiation of corporate insolvency resolution process by financial creditor.

(1) A financial creditor either by itself or jointly with other financial creditors other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of the sub-section (6A) of the section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten percent. of the total number of such creditors in the same class, whichever is less:

Provided further that for the financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten percent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first or second provisos and has not been admitted by the Adjudicating Authority before the commencement of the insolvency and Bankruptcy Code



(Amendment) Ordinance, 2019, such application shall be modified to comply with the requirements of the first or second provisos as the case may be within thirty days of the commencement of the said Ordinance, failing which the application shall be deemed to be withdrawn before its admission.

Explanation.- For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish-

- (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;*
- (b) the name of the resolution professional proposed to act as an interim resolution professional; and*
- (c) any other information as may be specified by the Board.*

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Provided *that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.*

(5) Where the Adjudicating Authority is satisfied that—

- (a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or
- (b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate-

- (a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;
- (b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

9. A bare perusal of the provision shows that in order to trigger the Section 7 of IBC 2016, the Adjudicating Authority has to examine only two aspects - whether there is a Financial Debt and whether there is any default in payment of the Financial Debt. The moment these two aspects

are established by the applicant and further, if it is found that the application is complete under Section 7(2) IBC 2016 and there is no disciplinary proceeding pending against the proposed IRP, the Adjudicating Authority under Section 7(5) IBC 2016 has no option but to admit the application.

10. We further notice that under the scope of Section 7 of IBC, 2016, the third person is not a necessary party. Only the Financial Creditor and the Corporate Debtor are the necessary party in these proceedings.

11. We further notice that the applicant has filed this application under Section 60(5) of IBC, 2016. Admittedly, the IB/913/2020 has not been admitted as yet. Therefore, in our considered view, the applicant is not a necessary party and even their prayer, which has been made under Section 60(5) of the IBC, 2016, cannot be allowed.

12. For the reason discussed above, we are unable to allow the Applicant's prayer for permitting them to participate/intervene in the proceedings of the Company Petition No. IB/913/ND/2020.

13. ***Accordingly, the prayer of the applicant is hereby rejected and the IA -1615/2021 stands Dismissed.***



(L.N. GUPTA)
Member (T)



(ABNI RANJAN KUMAR SINHA)
Member (J)