

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 666 of 2019**

(Arising out of Order dated 14<sup>th</sup> May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Cuttack Bench, Cuttack in TP No. 41/CTB/2019 CP (IB) No. 352/KB/2018)

**IN THE MATTER OF:**

**Srei Multiple Asset Investment Trust**

**...Appellant**

**Vs.**

**IDBI Bank Ltd. & Ors.**

**...Respondents**

**Present: For Appellant: - Mr. Abhijeet Sinha, Mr. Arijit Mazumdar, Mr. Aditya Sukla, Mr. Shambo Nandy, Mr. Saikat Sarkar, Mr. Devesh Ajmani and Ms. Akanksha Kaushik, Advocates.**

**For Respondents: - Mr. Arun Kathpalia, Senior Advocate with Ms. Misha, Mr. Siddhant Kant, Mr. Eklavya Dwivedi, Ms. Bani Brar and Ms. Jasveen Kaur, Advocates.**

**J U D G M E N T**

**SUDHANSU JYOTI MUKHOPADHAYA, J.**

‘IDBI Bank Limited’ (‘Financial Creditor’) filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (‘I&B Code’ for short) for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘M/s. Odisha Slurry Pipeline Infrastructure Limited’- (‘Corporate Debtor’) alleging default in paying financial debt of Rs.471,59,37,171/- (Rupees Four Hundred Seventy-One Crore Fifty-Nine Lakh Thirty-Seven

Thousand One Hundred and Seventy-One only), which has been admitted.

2. 'M/s. SREI Infrastructure Finance Limited' filed an intervention petition to oppose the prayer. However, it was not entertained by the Adjudicating Authority (National Company Law Tribunal), Cuttack Bench, Cuttack.

3. At that stage, 'M/s. SREI Infrastructure Finance Limited' moved before this Appellate Tribunal in Appeal No. 126/2019 wherein this Appellate Tribunal held that 'M/s. SREI Infrastructure Finance Limited' has no right to intervene at the stage of admission. However, allowed 'M/s. SREI Infrastructure Finance Limited' to file written submissions not more than three pages before the Adjudicating Authority with direction to the Adjudicating Authority to consider the same.

4. Before the Adjudicating Authority, 'M/s. SREI Infrastructure Finance Limited' opposed the application only on the ground that they also gave loan of Rs.136.50 Crore to the 'Corporate Debtor' on the basis of the Business Transfer Agreement. However, such submission was not accepted by the Adjudicating Authority.

5. Learned counsel for the Appellant contended that the claim of the 'IDBI Bank Limited' was considered by the 'Resolution Professional' in the 'Corporate Insolvency Resolution Process' which was initiated against 'Essar Steel India Limited' and was pending before the Adjudicating

Authority. Therefore, according to learned counsel for the Appellant, for the same claim amount the 'IDBI Bank Limited' cannot file application under Section 7 against 'M/s. Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor').

6. The Adjudicating Authority rejected such submission in absence of any record in support of such plea as was taken by 'M/s. SREI Infrastructure Finance Limited' (not the present Appellant). The Adjudicating Authority admitted the application under Section 7 by impugned order dated 14<sup>th</sup> May, 2019 which is under challenge.

7. In the present appeal, the Appellant has taken similar plea as was taken by 'M/s. SREI Infrastructure Finance Limited' before the Adjudicating Authority. However, as we find that 'IDBI Bank Limited' had also granted loan to the 'Corporate Debtor'- 'M/s. Odisha Slurry Pipeline Infrastructure Limited', we hold that the application under Section 7 filed by the 'IDBI Bank Limited' has been rightly admitted.

8. Similar plea was taken by the 'Corporate Debtor' that the 'IDBI Bank' had filed its claim before the 'Resolution Professional' of 'Essar Steel India Limited. However, from the record and the judgment passed in 'Essar Steel India Limited', we find that no such claim was made by 'IDBI Bank Limited' in respect to the claim amount as shown against 'M/s. Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor').

9. The Appellant has enclosed a copy of 'Business Transfer Agreement' between 'Essar Steel India Limited' and 'Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor') dated 27<sup>th</sup> February, 2015. From the said 'Business Transfer Agreement', it is clear that 'Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor') was treated as integral part for functioning of 'Essar Steel India Limited'. However, the Agreement shows that the two entities i.e. 'Essar Steel India Limited' and 'Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor') remained separate entities (companies) under the Companies Act, therefore, separate application under Section 7 was maintainable against 'Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor').

10. The application under Section 7 in Form 1 has also been enclosed by the Appellant- 'SREI Multiple Asset Investment Trust', wherein the details of loan taken by 'Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor') has been shown. The Adjudicating Authority has also noticed that the loan was taken by the 'Corporate Debtor' was not refunded and the 'Corporate Debtor' defaulted to pay the debt, which is not in dispute.

11. The 'Loan Agreement' dated 24<sup>th</sup> September, 2015 which was reached between 'Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor') and 'IDBI Bank Limited' also show that a sum of Rs. 400 Crores was borrowed by the 'Corporate Debtor' from 'Financial

Creditor'. The terms of repayment have been shown therein. Admittedly, the 'Corporate Debtor' has failed to pay the debt.

12. This apart, curiously, the Promoters/ Directors of the 'Odisha Slurry Pipeline Infrastructure Limited'- ('Corporate Debtor') who are aggrieved parties have not preferred any appeal under Section 61 of the 'I&B Code'. One of the 'Financial Creditors', namely— 'SREI Multiple Asset Investment Trust' (Appellant herein) has challenged the order of admission under Section 7 who cannot be held to be an aggrieved person.

13. As no case has been made out by the Appellant, the appeal is dismissed. No costs.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice A.I.S. Cheema)  
Member(Judicial)

(Kanthi Narahari)  
Member(Technical)

NEW DELHI

25<sup>th</sup> September, 2019

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