



**ORDER**

**31.10.2018** Both the appeals were heard and the judgment was reserved. In the meantime, in view of the affidavit filed on behalf of Respondent No. 19 – ‘Ghanshyam Misra & Sons Pvt. Ltd.’ (the ‘successful resolution applicant’), the case has been listed at the instance of the learned counsel for the appellant.

In these appeals, the appellant(s) – ‘SREI Infrastructure Finance Ltd.’ & ‘SREI Equipment Finance Ltd.’ raised grievance against the ‘resolution plan’, which was submitted by the 19<sup>th</sup> Respondent along with others and plan was approved by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata by order dated 22<sup>nd</sup> June, 2018. The main grievance was that the appellant – ‘SREI Infrastructure Finance Ltd.’ has not been treated equally with other ‘Financial Creditors’. If it would have been treated equally, the appellant would be entitled for further sum of Rs. 94 Lakhs approximately.

In the affidavit filed by the 19<sup>th</sup> Respondent – ‘Ghanshyam Misra & Sons Pvt. Ltd.’ on behalf of the ‘successful resolution applicant’, the following statement has been made :

*“6. That to set at rest any further controversy and possible litigation arising from this Appeal, the Respondent No. 19 is willing to make payment of the differential amount of INR 94 Lakhs to the Appellant in the present appeal i.e. SREI Infra and SEFL being the Appellant in Appeal No. 466 of*

*2018, subject to withdrawal and/or dismissal of the Appeal No. 405 of 2018 and Appeal No. 466 of 2018.*

- 7. The successful Resolution applicant states that it supports the distribution methodology as approved by 89.23% of the CoC members which has been approved by the Adjudicating Authority, Kolkata and that the payment to the Financial Creditors shall be made as per the approved Resolution Plan.*
- 8. That this payment of INR 94 lacs will be made without prejudice to Respondent No. 19's rights and contentions on merits. This payment is being made in the best interest of the Corporate Debtor i.e. OMML and all its stakeholders so that implementation of the approved Resolution Plan can be done by all concerned and the Corporate Debtor ie OMML can be revived at the earliest."*

Learned counsel appearing on behalf of the appellants submits that if the 'resolution plan' is modified to the extent as proposed at paragraph 6 of the affidavit by allowing further differential amount of Rs. 94 Lakhs in addition to the amount already allocated in the 'resolution plan' to the appellant, then the appellants will agree with the proposal.

Learned counsel appearing on behalf of the 'successful resolution applicant – Ghanshyam Misra & sons Pvt. Ltd.' and the learned counsel

appearing on behalf of the 'Committee of Creditors' have no objection if the 'resolution plan' is modified to the extent above.

In the circumstances, we modify the 'resolution plan' as approved by the Adjudicating Authority so far it relates to the payment of amount to the appellant - 'SREI Infrastructure Finance Limited' who will be entitled the amount already proposed in the 'resolution plan' plus(+) additional differential amount of Rs. 94 Lakhs, as stated in the affidavit, on the same terms & conditions as proposed in the 'resolution plan'.

In view of the aforesaid order, we allow the parties to implement the 'resolution plan' with amendments as shown above and to make payments.

So far as 'IFCI Bank' is concerned, they had not raised any objection before the Adjudicating Authority and having voted in the favour of the 'resolution plan', we are not granting any relief to the Respondent 'IFCI Bank'.

Both the appeals stand disposed of in terms of the aforesaid terms, observations and directions. No cost.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

/ns/sk/